



October 2, 2002

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2002-5564

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170091

The Texas Youth Commission (the "commission") received a request for information relating to Willoughby House, a facility operated by the commission, and to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

We first note that you have neither submitted nor claimed exception for a variety of information responsive to the request, including the following: the Texas Youth Commission Employee Handbook, the Guidelines for Possible Disciplinary Actions, personnel file information, employee time sheets, monthly employee work schedules, daily log, disciplinary actions taken against staff, staff grievances, rebuttals, and resolutions, staff complaints, and certain hire and termination, transfer, or resignation dates. To the extent that any information held by or available to the commission is responsive to these parts of the request, we assume that it has been released. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302. We note that the commission need not release information that did not exist when the request was received or create new information in response to the request. *See* Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975).

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We next note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108

The submitted documents include completed reports and evaluations. Therefore, as prescribed by section 552.022, the commission must release the completed reports and evaluations unless they are excepted from disclosure under section 552.108 of the Government Code or are confidential under other law. You do not raise section 552.108. Thus, we address your argument under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that a portion of the information is confidential under section 61.073 of the Human Resources Code. Section 61.073 provides:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records are not public and are available only according to the provisions of Section 58.005, Family Code, and Chapter 61, Code of Criminal Procedure.

Section 58.005(a) of the Family Code provides that "[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment . . . of a child by [an agency] providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court" may only be disclosed to certain individuals under certain circumstances. Some of the submitted documents consist of records of the examination and treatment of a juvenile. In addition, several of the documents you seek to withhold under section 61.073 consist of records of the psychiatric counseling and treatment of this juvenile.

We recognize that section 61.073 encompasses the submitted mental health records as records of examination and treatment in general. We note, however, that chapter 611 of the Health and Safety Code specifically addresses the public availability of mental health records. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. See *Cuellar v. State*, 521 S.W.2d 277 (Tex.Crim.App.1975) (under well-established rule of statutory construction, specific

statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). Accordingly, we will address the mental health records at issue under chapter 611 of the Health and Safety Code. Section 611.002 of the Health & Safety Code provides in pertinent part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Under section 611.001, a “professional” is (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. A portion of the submitted information consists of records of the identity, diagnosis, evaluation, or treatment of a patient that are confidential with respect to the general public and may only be disclosed as provided under sections 611.004 and 611.0045 of the Health and Safety Code.

Section 611.0045 states in pertinent part:

(a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient’s physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient’s physical, mental, or emotional health and shall include a copy of the written statement in the patient’s records. The statement must specify the portion of the record to which access is denied, the reason for the denial, and the duration of the denial.

....

(f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient’s behalf.

We note that none of the release provisions of section 611.004(a) applies in this instance. We therefore determine that the commission must withhold the records we have marked under section 552.101 in conjunction with section 611.002 of the Health and Safety Code.

Some of the documents, which we have marked, consist of records of examination and treatment but are not mental health records. We address these documents under section 61.073 of the Human Resources Code. As noted above, section 61.073 requires that, except as provided by section 61.093(c), records of the examination and treatment of an individual in the custody of the commission are not public and are available only as provided in section 58.005 of the Family Code and chapter 61 of the Code of Criminal Procedure. We find that the requestor is not a party to whom the information at issue may be disclosed pursuant to section 58.005 of the Family Code. We further find that section 61.093(c) of the Human Resources Code and chapter 61 of the Code of Criminal Procedure do not apply in this instance. Accordingly, we determine that the commission must withhold the examination and treatment records we have marked under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.

For the remaining information, we turn to the doctrine of common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Accordingly, we have marked information that would identify several juvenile offenders that must be withheld under section 552.101 and the doctrine of common-law privacy. *Cf.* Fam. Code § 58.007. *See also* Open Records Decision No. 394 (1983).

In summary, the commission must withhold the marked mental health records pursuant to section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The examination and treatment records we have marked must be withheld under section 552.101 in conjunction with section 61.073 of the Human Resources Code. For certain information we have marked, the commission must withhold the names and addresses of juvenile offenders under section 552.101 and common-law privacy. The remainder of the information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 170091

Enc: Submitted documents

c: Mr. Jon M. Fulton
2301 Tremont Avenue
Fort Worth, Texas 76107
(w/o enclosures)